PHILIP GODLEWSKI, *Plaintiff*	:	In the Court of Common Pleas of Lackawanna County
v.	:	Civil Action - Law
BRIENNA DuBORGEL, *Defendant*	:	No. 2023-CV-1354

LAUREN M. MAILEN
LACKAWANNA COUNTY
2026 JUN -3 P 1:55
CLERKS OF JUDICIAL
RECORDS CIVIL DIVISION

GIBBONS, P.J.

MEMORANDUM AND ORDER

I. INTRODUCTION

The instant matter arises from allegations of defamation, publicity to private life invasion of privacy, and false light invasion of privacy relating to an affidavit signed by Brienna L. DuBorgel ("DuBorgel" or "Defendant") for use in an underlying case, Godlewski v. Kelly, et al., Lackawanna County Court of Common Pleas Docket No. 2021-CV-2195. Philip Godlewski ("Godlewski" or "Plaintiff") filed his Complaint against DuBorgel, and DuBorgel filed an Answer with New Matter and Counterclaim alleging defamation, false light invasion of privacy, assault, battery, intentional infliction of emotional distress ("IIED"), and negligent infliction of emotional distress ("NIED"). On April 17, 2025, we issued an Order granting in part and denying in part the parties' cross-motions for summary judgment.[1] Plaintiff filed a petition for permission to appeal with the Superior Court, and his petition was dismissed without prejudice.

Defendant now files a petition for injunctive relief and motion to compel, seeking: (1) an Order compelling Plaintiff to post a $2,000,000.00 bond and (2) an Order compelling Plaintiff to

[1] We granted Godlewski's motion for partial summary judgment on DuBorgel's counterclaim for intentional infliction of emotional distress. We denied Godlewski's motion for partial summary judgment in all other respects. We granted DuBorgel's motion for partial summary judgment on (1) Godlewski's claims for defamation and invasion of privacy false light and (2) DuBorgel's counterclaims for assault and battery. We denied DuBorgel's motion for partial summary judgment in all other respects.

produce, for inspection and copying, text messages exchanged between Plaintiff and his attorney, Kymberley L. Best, Esq., between October 12, 2025 and October 14, 2025.

II. FACTUAL BACKGROUND

Godlewski's Complaint makes the following allegations. On October 31, 2022, DuBorgel signed an affidavit prepared by, or at the direction of, Attorney J. Timothy Hinton Jr. *See* Compl. at ¶ 6. [redacted]

[redacted]
REDACTED BY D BOOMA SAN: DETAILS FROM HER AFFIDAVIT
[redacted]

Godlewski was charged with one count of corruption of minors, 18 Pa. C. S. A. §6301(a)(1), by an Information filed on November 16, 2010 at Lackawanna County Docket No. 2010-CR-2613. *Id.* at ¶ 15. The Information alleged Godlewski "did repeatedly have inappropriate text messages and contact with a minor." *Id.* at ¶ 15. Godlewski entered a plea of guilty[2] at Lackawanna County Docket No. 2010-CR-2613 to one count of corruption of minors. *Id.* at ¶ 17, Ex. 3.

Godlewski alleges that the affidavit signed by DuBorgel is defamatory, invades Godlewski's privacy by casting Godlewski in a false light to the public, and invades Godlewski's privacy by giving publicity to Godlewski's private life. *Id.* at ¶¶ 19-24, 26-32, 41, 48. Additionally, Godlewski alleges he has suffered special harm in the form of damage to his reputation and character. *Id.* at ¶ 25.

[2] The Complaint states "Godlewski entered a plea of quilts," however, we paraphrase for clarity.

Godlewski seeks compensatory, nominal, and punitive damages, along with equitable relief "sufficient to prevent similar future conduct by the Defendant" and counsel fees. *Id.* at ¶ 48.

DuBorgel's petition for injunction alleges the following additional facts. The parties had been engaging in communications in relation to the potential settlement of this claim against the advice of counsel. *See* Pet. for Injunction at ¶ 15. [redacted]

REDACTED BY D BOOMA SAN: HER AGE

[redacted] Godlewski affirmed the statements and requested DuBorgel produce a new affidavit to this effect, promising a large settlement in exchange. *Id.* Counsel for DuBorgel avers that DuBorgel was mistaken, [redacted] Godlewski knew the truth and was manipulating DuBorgel. *Id.* at ¶¶ 16-18. Furthermore, counsel for Godlewski was attempting to contact and advise DuBorgel via text messages to Godlewski, which Godlewski then screenshotted and sent to DuBorgel. *Id.* at ¶¶ 18-19.[3]

By letter dated October 14, 2025, counsel for DuBorgel notified counsel for Godlewski of a demand for the entire thread of the text message discussion between Godlewski and his counsel. *Id.* at ¶ 22. By email dated October 14, 2025, Godlewski emailed counsel for DuBorgel the following:

> Hey Molly!
> F—k you, and f—k your client.
> Keep her and her insane mind away from me. Be sure she NEVER messages me again, or I will indeed file a restraining order.
> You will never get a DIME from me. Neither you, your firm, nor her. Mark my words. Not a f—king dime.

[3] The petition further avers that texts from Godlewski and counsel for Godlewski were defamation against counsel for DuBorgel and actionable. *See* Pet. at ¶¶ 18-20. Texts such as "Molly doesn't know her a—hole from a hole in the ground" and "She [DuBorgel] could have a very strong case for mal-practice [sic]" are examples cited in the petition to support this.

Id. at ¶ 24, Ex. C.

The petition avers that Godlewski has stated he would never give DuBorgel any monetary compensation three other instances, including if a jury verdict was entered against him. *Id.* at ¶ 25. In texts from Godlewski to DuBorgel, the former also maligns the court and asserts that "every step of the legal process was corrupted against [Godlewski]" and that President Judge Gibbons "completely and intentionally misinterpreted the law[.]" *Id.* at ¶¶ 25-27.

III. STANDARD OF REVIEW

A preliminary injunction is a temporary remedy granted until the parties' dispute can be fully resolved. Cutler v. Chapman, 289 A.3d 139, 149–50 (Pa. Commw. Ct. 2023). The party seeking a preliminary injunction bears a heavy burden of proof and must establish all of the following criteria:

> (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages;
> (2) greater injury would result from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings;
> (3) the preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
> (4) the party seeking injunctive relief has a clear right to relief and is likely to prevail on the merits;
> (5) the injunction is reasonably suited to abate the offending activity; and[ ]
> (6) the preliminary injunction will not adversely affect the public interest.

SEIU Healthcare Pa. v. Commonwealth, 104 A.3d 495, 502 (Pa. 2014); Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc., 828 A.2d 995, 1001 (Pa. 2003) (reiterating preliminary injunction criteria). "Because the grant of a preliminary injunction is a harsh and extraordinary remedy, it is to be granted only when and if each [factor] has been fully and completely established." Pa. AFL-CIO by George v. Commonwealth, 683 A.2d 691, 694 (Pa. Cmwlth. 1996). However, "if the petitioner fails to establish any one of them, there is no need to address the others." Lee Publications, Inc. v. Dickinson School of Law, 848 A.2d 178, 189 (Pa. Cmwlth. 2004)

(*en banc*) (quoting County of Allegheny v. Commonwealth, 518 Pa. 556, 544 A.2d 1305, 1307 (1988)). A trial court has reasonable grounds for its denial of relief where it finds that any one of the essential prerequisites for a preliminary injunction is not satisfied. Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc., 573 Pa. 637, 646, 828 A.2d 995, 1001 (2003) (citations omitted). "[A]ppellate review of a trial court's order granting or denying preliminary injunctive relief must be highly deferential to the trial court and conducted to discern whether there are "any apparently reasonable grounds" to support the trial court's order." CKHS, Inc. v. Prospect Med. Holdings, Inc., 329 A.3d 1204, 1216 (Pa. 2025) (citing Summit Towne Ctr., *supra*).

> (a) Subject to the provisions of Rules 4003.2 to 4003.5 inclusive and Rule 4011, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.
>
> Pa. R. Civ. P. 4003.1.

IV. DISCUSSION

A. DuBorgel's Arguments

DuBorgel avers discovery has shown that Godlewski has "substantial assets" and a net worth in the millions. *See* Pet. for Injunction at ¶ 30. DuBorgel seeks a $2 million bond to be posted before Godlewski can "spend and/or move his assets around to hide them in the event a monetary Judgement [sic] is obtained." *Id.* at ¶ 31. DuBorgel quotes Godlewski's statement that "they can put me in jail if they want to, that's fine. I won't pay it, ever." *Id.* at ¶ 30, Ex. H. DuBorgel avers that Godlewski has spent the 2025 summer moving his property-based assets around. *Id.* at ¶ 31. DuBorgel quotes a Montgomery County Court of Common Pleas case from 1943, arguing that in cases involving a personal judgment for money damages "if a judgment should be obtained,

defendant had to put up a bond." Jageler v. Jageler, 47 Pa. D. & C. 699 (Com. Pl. 1943). DuBorgel also makes a perfunctory recitation of the five of the six criteria required for granting a preliminary injunction. Pet. for Injunction at ¶ 32.

DuBorgel additionally seeks the production of the text messages exchanged between Godlewski and his attorney, Kymberley L. Best, between October 12, 2025, and October 14, 2025. *Id.* at ¶ 33. DuBorgel argues the texts are relevant under the relevancy standard for discovery and the attorney-client privilege was voluntarily waived by Godlewski. *Id.* DuBorgel argues that Godlewski's sharing of his texts to Attorney Best with DuBorgel, via screenshots of those texts sent to DuBorgel, waived any attorney-client privilege as to the subject matter of those texts. *Id.* DuBorgel argues that, at a minimum, Godlewski's admission to having sex with DuBorgel, settlement offers from Godlewski and Attorney Best, trial and appellate strategy of Attorney Best, and Godlewski's efforts to "control and manipulate Ms. DuBorgel" are no longer covered by attorney-client privilege. *Id.*

B. **Godlewski's Arguments**

Godlewski argues that DuBorgel has not made any showing to satisfy any of the criteria of the test for a preliminary injunction. *See* Brief in Opp. at p. 3. Godlewski argues additionally that DuBorgel would be obligated to post a bond covering the bond which she seeks in the event an injunction were to issue, and that DuBorgel's proposed injunction is thus a "circular morass[.]" *Id.*

Godlewski argues that the entry of summary judgment against him does not compel him to immediately write a check. *Id.* at p. 4. He relies on case law discussing how judgment liens represent security for a debt and convey a right of execution to the judgment creditor, including operating as a lien upon all real property of the debtor in the county. In re Upset Sale, Tax Claim Bureau of Berks Cnty., 505 Pa. 327, 479 A.2d 940 (1984). Godlewski argues that the existence of his "vast assets" negates any argument for immediate and irreparable harm, because pleading as such in fact proves

that Godlewski has assets available to satisfy any potential award. *See* Brief in Opp. at pp. 4-5. Godlewski avers that DuBorgel already has sufficient tools available to her to execute and recover costs. *Id.* at p. 5.

Godlewski argues there is no proof that greater harm will result from refusal than from issuance of an injunction requiring a bond. *Id.* Godlewski argues no evidence exists that has transferred or intends to transfer property. *Id.* Godlewski states the vast majority of his assets "are in the form of real estate with publicly recorded titles" and that DuBorgel is in an "easy position" to determine whether Godlewski has dissipated assets. *Id.* Godlewski argues that DuBorgel has adequate remedies available at law under the Pennsylvania Uniform Voidable Transfers Act if indeed he alienates his primary assets. *Id.* Godlewski additionally avers that both parties will be harmed if this Court grants DuBorgel's injunction, because Godlewski will be forced to pay the premium of the bond and that DuBorgel would have to post a bond covering Godlewski's costs in purchasing the bond, in addition to other costs. *Id.* at pp. 5-6.

Godlewski also argues that DuBorgel's proposed injunction would disrupt the status quo by placing DuBorgel in a position of advantage unlike any other judgment creditor because she would have a guaranteed source of payment of her judgment. *Id.* at p. 6. Godlewski disputes the authority of the case that DuBorgel relies on, Jageler. Godlewski notes that Jageler dealt with a situation in which a divorce master recommended staying proceedings until the end of World War II so that the respondent, a Germany resident, could come to the United States to answer the complaint. Jageler v. Jageler, 47 Pa. D. & C. 699 (Com. Pl. 1943). Furthermore, the portion of Jageler quoted by DuBorgel was in fact from an unidentified case being cited within Jageler.

Godlewski argues that DuBorgel provides no authority for the proposition that a court may compel a party to provide a bond for payment of damages based on a partial summary judgment

verdict, and as a result, DuBorgel cannot establish a clear right to relief on her request for injunctive relief. Brief in Opp. at p. 7.

Godlewski also argues that the proposed injunction is not reasonably suited to abate the offending activity, which in this instance, is Godlewski's threat to not pay a money judgment. Brief in Opp. at p. 7.

Finally, Godlewski argues that the proposed injunction would adversely affect the public interest by setting a new precedent where a claimant could compel a defendant to incur the cost and expense of posting security to pay "an [sic] hypothetical judgment." *Id.* at p. 8.

Disclosure to a third party generally waives the attorney-client privilege. BouSamra v. Excela Health, 653 Pa. 365, 210 A.3d 967 (2019).

Godlewski admits it is undisputed that he waived attorney-client privilege with respect to the specific text messages between Godlewski and his counsel which were screenshotted and transmitted to DuBorgel. Brief in Opp. at p. 9. However, Godlewski argues that Pennsylvania has not adopted subject matter waiver of attorney-client privilege. Bagwell v. Pennsylvania Dep't of Educ., 103 A.3d 409 (Pa. Commw. Ct. 2014). Furthermore, "when waiver is the focus of a dispute, the burden is shifted to the party asserting waiver." *Id.* Godlewski avers that DuBorgel has not met her burden of proof to compel production of other privileged communications with the same subject matter as the text messages already presented. In the alternative, Godlewski argues, DuBorgel has not shown how the text messages between Godlewski and his counsel are relevant to establishing any element of the parties' claims and defenses, and therefore, DuBorgel's motion to compel should be denied.

C. Analysis

1. DuBorgel's Petition for Injunctive Relief

A trial court has reasonable grounds for its denial of relief where it finds that any one of the essential prerequisites for a preliminary injunction is not satisfied. Summit Towne Ctr., Inc., *supra.*

DuBorgel's petition for injunction focuses on arguing that an immediate and irreparable harm exists which cannot be repaid by money damages, that is, the possibility that Godlewski will dissipate his assets and become judgment proof. *See* Pet. For Injunction at ¶¶ 30-31. However, other than repeated threats by Godlewski via electronic communication that he would not pay any judgment against him, DuBorgel in her petition has provided no evidence of intent or actions by Godlewski to dissipate or alienate his assets. At the injunction hearing on March 4, 2026, counsel for DuBorgel presented an argument that Godlewski transferred one of his properties in Arizona which was worth in excess of $3 million to make himself judgment proof. *See* March 4, 2026 Hearing Transcript at pp. 7-11. Counsel for DuBorgel submitted the list of Godlewski's assets which was obtained during asset discovery, purporting to show a transfer of an Arizona property valued at $2.8 million into one of Godlewski's businesses, Philco West, LLC. However, there was no evidence as to when the transfer took place, nor was there any evidence to suggest the true value of the property. We are not persuaded that an immediate and irreparable harm exists. Therefore, we will **DENY** DuBorgel's petition for injunction.

2. DuBorgel's Motion to Compel Production of Additional Text Messages

An order to compel discovery which involves a question of attorney-client privilege is reviewable under the collateral order doctrine under an abuse of discretion standard. Carlino E. Brandywine, L.P. v. Brandywine Vill. Assocs., 2021 PA Super 147, 194, 196, 260 A.3d 179 (2021).

The party asserting the attorney-client privilege has the initial burden to prove that it is properly invoked, and the party seeking to overcome the privilege has the burden to prove an applicable exception to the privilege. Joyner v. Southeastern Pennsylvania Transportation Authority, 736 A.2d 35 (Pa.Cmwlth.1999).

The parties do not dispute that Godlewski waived his attorney-client privilege with respect to specific text messages between Godlewski and Attorney Best which Godlewski directly shared with DuBorgel. Pet. for Injunction at ¶ 33, Brief in Opp. at p. 9. DuBorgel seeks the production of the text messages exchanged between Godlewski and his attorney, Kymberley L. Best, between October 12, 2025, and October 14, 2025. DuBorgel argues that Godlewski's waiver of attorney-client privilege with respect to specific text messages between Godlewski and Attorney Best also applies to other texts between Godlewski and Attorney Best sharing similar dates and subject matter.

"Under federal decisional law, the general rule regarding the voluntary disclosure of privileged attorney-client communications is that the disclosure waives the privilege as to all other communications on the same subject." Bagwell v. Pennsylvania Dep't of Educ., 103 A.3d 409, 418 (Pa. Commw. Ct. 2014)(citing Nationwide Mut. Ins. Co. v. Fleming, 605 Pa. 468, 992 A.2d 65 (2010) (op. in support of affirmance; equally divided court). However, Pennsylvania courts "have not adopted subject-matter waiver." Bagwell, *supra* at 419 (Pa. Commw. Ct. 2014). To the extent Pennsylvania courts have applied subject matter waiver, it has been in a limited capacity. The Pennsylvania Supreme Court has held that, where a party intentionally discloses documents to its adversary containing a certain subject matter, the disclosing party waives the attorney-client privilege as to other documents containing the same subject matter. Fleming, *supra*, 992 A.2d 65, 70 (2010) (relying on Murray v. Gemplus Int'l, S.A., 217 F.R.D. 362 (E.D. Pa. 2003) and Minatronics Corp. v. Buchanan Ingersoll, P.C., 23 Pa. D. & C.4th 1 (Com. Pl. 1995) (finding that the *inadvertent* disclosure of confidential communications did *not* waive the privilege as to confidential communications

containing the same subject matter)). The Court's reasoning was that a party should not be permitted to use attorney-client privilege as a sword and shield simultaneously in order to gain a tactical advantage. *Id.*

In the instant matter, Godlewski intentionally disclosed confidential text messages between himself and Attorney Best to DuBorgel. However, we find that DuBorgel has not met her burden of proof to demonstrate that Godlewski waived his attorney-client privilege as to the remainder of the text messages exchanged between Godlewski and Attorney Best. There is no evidence as to the subject matter of any other text messages in the requested time frame. Accordingly, we will **DENY** DuBorgel's motion to compel.

V. CONCLUSION

For the above reasons, we will **DENY** DuBorgel's petition for injunction and motion to compel. An appropriate Order follows.

PHILIP GODLEWSKI, *Plaintiff*	: :	In the Court of Common Pleas of Lackawanna County
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ORDER

NOW, this 30 day of June, 2026, upon consideration of DuBorgel's petition for injunctive relief and motion to compel, it is hereby **ORDERED** that:

1. DuBorgel's petition for injunctive relief is **DENIED**;
2. DuBorgel's motion to compel the production of text messages is **DENIED**.

BY THE COURT:

James A. Gibbons, P.J.

cc: *Written notice of the entry of the foregoing Order has been provided to each party pursuant to Pa. R. Civ. P. 236(a)(2) by mailing time-stamped copies to:*

JUN - 3 2026
NOTIFIED

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